

**DATED**

**THE MAYOR AND BURGESSES OF  
THE LONDON BOROUGH OF ISLINGTON**

**- and -**

**[ ]**

---

**JCT INTERMEDIATE BUILDING CONTRACT 2011 EDITION AS AMENDED FOR  
REFURBISHMENT WORKS AT 49-59 OLD STREET  
(CONTRACT NO. 1718-0159)**

---

**Director of Law and Governance  
Resources Directorate  
Islington Council  
7 Newington Barrow Way  
London  
N7 7EP**

**Ref: MAF/HSC/358**

**THIS AGREEMENT** is on

**BETWEEN**

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF ISLINGTON** of the Town Hall, Upper Street, London N1 2UD (hereinafter called "**the Employer**");

and

- (2) [ ] whose registered office is [ ] (Company Registration No. [ ]) ("**the Contractor**");

(hereinafter collectively called "**the Parties**" and independently called "**the Party**")

**NOW IT IS HEREBY AGREED** as follows:

1. The Recitals, Articles and Conditions of Contract will be those issued by the Joint Contracts Tribunal Limited's Intermediate Building Contract 2011 Edition, incorporating the amendments set out in this Agreement and its Appendices and the requirements of all documents forming the Contract.
2. In the event of any discrepancy between the documents forming the Conditions and/or the Articles the wording set out in Appendix 1 Part 1 shall prevail.

## RECITALS

<b>First</b>	<p>the Employer wishes to have the following work carried out:</p> <p>refurbishment works at 49-59 Old Street as more particularly described in the Specification ('the Works')</p> <p>and has had drawings and bills of quantities or a specification or work schedules prepared which show and describe the work to be done;</p>
<b>Second</b>	<p>the drawings are:</p> <p>annexed to this contract in Appendix 2</p> <p>('the Contract Drawings');</p>
<b>Third</b>	<p>the Employer has supplied to the Contractor:</p> <p>the Bills of Quantities</p> <p>the Specification</p> <p>the Work Schedules</p>
<b>Fourth</b>	<p>the Contractor has:</p> <p>(A) priced the Bills of Quantities/Specification/Work Schedules (as priced, 'the Priced Document'), the total of such pricing being the Contract Sum stated in Article 2 ('Pricing Option A'); or</p> <p>(B) stated the sum he will require for carrying out the Works shown on the Contract Drawings and described in the Specification, that sum being the Contract Sum stated in Article 2, and has supplied to the Employer a Contract Sum Analysis in accordance with the stated requirements of the Employer or a Schedule of Rates on which that sum is based ('the Priced Document') ('Pricing Option B');</p> <p>and has provided the Employer with a priced schedule of activities ('the Activity Schedule');</p> <p>the Priced Document, the priced Activity Schedule, where provided, and (where Pricing Option B applies) the (unpriced) Specification are annexed to this Contract in Appendix [2];</p>
<b>Fifth</b>	<p>for the purposes of the Construction Industry Scheme (CIS) under the Finance Act 2004, the status of the Employer is, as at the Base Date,</p>

	that stated in the Contract Particulars;
<b>Sixth</b>	the Employer has provided the Contractor with a schedule ('the Information Release Schedule') which states the information the Architect/Contract Administrator will release and the time of that release;
<b>Seventh</b>	for the purposes of the Construction (Design and Management) Regulations 2015 (the 'CDM Regulations') the status of the project that comprises or includes the Works is stated in the Contract Particulars;
<b>Eighth</b>	the division of the Works into Sections is shown in the Bills of Quantities/Specification/Work Schedules and/or the Contract Drawings or in such other documents as are identified in the Contract Particulars;
<b>Ninth</b>	where so stated in the Contract Particulars, this Contract is supplemented by the Framework Agreement identified in those particulars;
<b>Tenth</b>	the Supplemental Provisions identified in the Contract Particulars apply;

## ARTICLES

<b>Now it is hereby agreed as follows:</b>	
<b>Article 1</b>	<b>Contractor's obligations</b>  The Contractor shall carry out and complete the Works in accordance with the Contract Documents.
<b>Article 2</b>	<b>Contract Sum</b>  The Employer shall pay the Contractor at the times and in the manner specified in the Conditions the VAT-exclusive sum of  [ ] (£[ ]) ('the Contract Sum')  or such other sum as shall become payable under this Contract
<b>Article 3</b>	<b>Architect/Contract Administrator</b>  For the purposes of this Contract the Architect/Contract Administrator is  Fiona Monkman of The London Borough of Islington Principal Architect Northway House 257-258 Upper Street London N1 1RU  or, if he ceases to be the Architect/Contract Administrator, such other person as the Employer shall nominate in accordance with clause 3.4 of the Conditions.
<b>Article 4</b>	<b>Quantity Surveyor</b>  For the purposes of this Contract the Quantity Surveyor is  Joe Corcoran of Joe Corcoran Consultancy Office 205, 28A Queensway, London W2 3RX.  or, if he ceases to be the Quantity Surveyor, such other person as the Employer shall nominate in accordance with clause 3.4 of the Conditions.
<b>Article 5</b>	<b>Principal Designer</b>

	<p>The Principal Designer for the purposes of the CDM Regulations is the Architect/Contract Administrator/</p> <p>(or) Mick Neal of The London Borough of Islington</p> <p>or such replacement as the Employer at any time appoints to fulfil that role.</p>
<b>Article 6</b>	<p><b>Principal Contractor</b></p> <p>The Principal Contractor for the purposes of the CDM Regulations is the Contractor <b>TBC</b></p> <p>or such replacement as the Employer at any time appoints to fulfil that role.</p>
<b>Article 7</b>	<p><b>Adjudication</b></p> <p>If any dispute or difference arises under this Contract, either Party may refer it to adjudication in accordance with clause 9.2.</p>
<b>Article 8</b>	<p><b>Arbitration</b></p> <p>Delete Article 8: Arbitration.</p>
<b>Article 9</b>	<p><b>Legal Proceedings</b></p> <p>Subject to Article 7, the English Courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract.</p>
<b>Article 10</b>	<p>Insert new Article 10 as follows: -</p> <p><b>Incorporation of Amendments</b></p> <p>The Employer and the Contractor have agreed to amend the Articles of Agreement, Conditions and Schedules set out in the Joint Contract Tribunal's Intermediate Building Contract 2011 Edition as set out in this Agreement and its Appendices which are incorporated into and form part of the Contract.</p>
<b>Article 11</b>	<p>Insert new Article 11 as follows: -</p> <p><b>Entire Agreement</b></p> <p>This Contract embodies the complete and entire agreement between</p>

	the Employer and the Contractor in respect of the Works and supersedes all previous communications whether oral or written.
<b>Article 12</b>	<p>Insert new Article 12 as follows: -</p> <p><b>Previous Instructions</b></p> <p>This Contract shall be binding upon the parties from the date hereof or the date on which the Contractor commenced the Works (whichever is the earlier). Any instruction given by the Employer pursuant to any letter of intent with the Contractor or otherwise in relation to the Works prior to the date hereof shall be deemed to be given by the Employer under this Contract and any such works undertaken deemed upon the date hereof to have been undertaken under this Contract with all amounts paid or payable in respect thereof treated as paid or payable to the Contractor on account of the sums payable in respect of the Contract Sum.</p>
<b>Article 13</b>	<p>Insert new Article 13 as follows:</p> <p><b>Parent Company Guarantee / Bond</b></p> <p>The Contractor shall within 14 days of a written request by the Employer deliver to the Employer a Parent Company Guarantee from the Contractor's ultimate parent company or such other parent company as the Employer may accept and/or a Bond duly executed as a deed in the relevant form annexed at Appendix 5.</p>

## CONTRACT PARTICULARS

Part 1: General		
Clause etc	Subject	
Fifth Recital and clause 4.5	Construction Industry Scheme (CIS)	Employer at the Base Date is a 'contractor' for the purposes of the CIS.
Seventh Recital	CDM Regulations	The project * is/is not notifiable. [TBC]
Eighth Recital	Description of Sections (if any) <i>(If not shown or described in the Bills of Quantities/Specification/Work Schedules or the Contract Drawings, state the reference numbers and dates or other identifiers of documents in which they are shown.)</i>	N/A
Ninth Recital	Framework Agreement (if applicable) <i>(State date, title and parties.)</i>	N/A
Tenth Recital and Schedule 5	Supplemental Provisions: <i>(Where neither entry against an item below is deleted, the relevant paragraph applies.)</i>  Collaborative working  Health and safety  Cost savings and value improvements  Sustainable development and environmental considerations  Performance indicators and monitoring  Notification and negotiation of disputes	Paragraph 1 applies  Paragraph 2 applies  Paragraph 3 applies  Paragraph 4 applies  Paragraph 5 applies  Paragraph 6 applies
	Where paragraph 6 applies, the respective nominees of the Parties are:	Employer's nominee: Christine Short



		<p>Contractor's nominee: <b>TBC</b></p> <p>or such replacement as each Party may notify to the other from time to time.</p>
Article 8	<p><b>Arbitration</b> <i>(If neither entry is deleted, Article 8 and clauses 9.3 to 9.8 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it <u>must</u> be stated that Article 8 and clauses 9.3 to 9.8 apply.)</i></p>	Article 8 and clauses 9.3 to 9.8 ( <i>Arbitration</i> ) do not apply.
1.1	Base Date	<p>Tender Return Date. The date 10 days prior to the date of submission of the Contractor's tender or quotation to carry out the Works.</p> <p>The Base Date is 3<sup>rd</sup> November 2017</p>
1.1	<p>Date for Completion of the Works <i>(where completion by Sections does not apply)</i></p>	Finish 12-months from the start date of the contract, assuming possession/start on site is 1 <sup>st</sup> February 2018
1.1	Sections: Dates for Completion of Sections	N/A
1.7	<p>Addresses for service of notices by the Parties <i>(If none is stated, the address in each case, subject to clause 1.7.3, shall be that shown at the commencement of the Agreement.)</i></p>	<p>Employer: the address at the beginning of this contract</p> <p>Contractor: the address at the beginning of this contract</p>
2.4	<p>Date of Possession of the site <i>(where possession by Sections does not apply)</i></p>	1 <sup>st</sup> February 2018
2.4	Sections: Date of Possession of Sections	N/A
2.5	<p>Deferment of possession of the site <i>(where possession by Sections does not apply)</i></p>	<p>Clause 2.5 applies</p> <p>Maximum period of deferment (if less than 6 weeks) is N/A</p>



	the percentage in respect of the completed works is <i>(The percentage is 97½ per cent unless a different rate is stated.)</i>	
4.9.4	Listed Items – uniquely identified <i>(delete the entry if no bond required.)</i>	N/A
4.9.5	Listed Items – not uniquely identified <i>(delete the entry if clause 4.9.5 does not apply.)</i>	N/A
4.15 and Schedule 4	Contribution, levy and tax fluctuations	Schedule 4 (Fluctuations Option) does not apply.
6.4.1.2	Contractor's insurance: injury to persons or property – insurance cover <i>(for any one occurrence or series of occurrences arising out of one event)</i>	£10 million
6.5.1	Insurance – liability of Employer <i>(Not required unless it is stated that it may be required and the minimum amount of indemnity is stated)</i>	Insurance is not required. The Employer will provide their own insurance.  Minimum amount of indemnity for any one occurrence or series of occurrences arising out of one event £10 million.
6.7 and Schedule 1	Insurance of the Works – Insurance Options	Schedule 1: Insurance Option B applies
6.7 and Schedule 1 Insurance Option A (paragraphs A.1 and A.3), B (paragraph B.1) or C (paragraph C.2)	Percentage to cover professional fees <i>(If no other percentage is stated, it shall be 15 per cent.)</i>	15 per cent
6.7 and Schedule 1 Insurance Option A (paragraph A.3)	Annual renewal date of insurance <i>(as supplied by the Contractor)</i>	[TBC]

6.10 and Schedule 1	<p><b>Terrorism Cover – details of the required cover</b>  <i>(State reference numbers and dates or other identifiers of documents setting out the requirements. Unless otherwise stated, Pool Re Cover is required.)</i></p>	Terrorism Cover is not required.
6.12	<p><b>Joint Fire Code</b></p> <p>If the Joint Fire Code applies, state whether the insurer under Schedule 1, Insurance Option A, B or C (paragraph C.2) has specified that the Works are a 'Large Project':</p>	The Joint Fire Code does not apply.
6.15	<p><b>Joint Fire Code – amendments/revisions</b>  <i>(The cost shall be borne by the Contractor unless otherwise stated.)</i></p>	The cost, if any, of compliance with amendment(s) or revision(s) to the Joint Fire Code shall be borne by the Contractor.
8.9.2	<p><b>Period of suspension</b>  <i>(If none stated the period is 2 months).</i></p>	2 months.
8.11.1.1 to 8.11.1.5	<p><b>Period of suspension</b>  <i>(If none stated the period is 2 months).</i></p>	2 months.
9.2.1	<p><b>Adjudication</b></p> <p>Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)  <i>(Where an Adjudicator is not named and a nominating body has not been selected, the nominating body shall be one of the bodies listed opposite selected by the Party requiring the reference to adjudication.)</i></p>	<p>The Adjudicator:</p> <p>Royal Institute of British Architects</p> <p>Association of Independent Construction Adjudicators</p>
9.4.1	<p><b>Arbitration – appointor of Arbitrator (and of any replacement)</b>  <i>(If no appointor is selected, the appointor shall be the President or a Vice-President of the Royal Institute of British Architects.)</i></p>	Does not apply.

## Part 2: Collateral Warranties

After “if such rights or warranties are required from the Contractor, complete the particulars in (A) to (D) below” insert: “The Employer may require the Contractor to provide collateral warranties in favour of Purchasers, Tenants or Funders in accordance with the provisions of clauses 7.4 to 7.6 of this Contract. The further provisions set out in Part 2 (A) to (D) of the Contract Particulars shall not apply”.

### **Collateral Warranties from Sub-Contractors**

After (E) “if warranties are required from sub-contractors, complete the particulars below:” insert: -

“The Employer may require the Contractor to procure collateral warranties from Sub Contractors in accordance with clause 7.6 of this Contract.”

The further provisions set out in Part 2(E) of the Contract Particulars shall not apply.

**IN WITNESS** whereof this Agreement has been executed by each of the Parties as a deed on the day and year above written

Executed as a deed by and on behalf of )  
**THE MAYOR AND BURGESSES OF** )  
**THE LONDON BOROUGH OF ISLINGTON** )  
in the presence of: )

.....  
 Authorised Officer

Executed as a deed by and on behalf of  
[REDACTED]  
by its authorised signatories:

(1) .....  
Director

.....  
Print Name

(2) .....  
Director/Company Secretary      Print Name

## APPENDIX 1

### PART 1

#### AMENDMENTS TO THE CONDITIONS

##### Conditions

##### **Section 1: Definitions**

Amend and insert definitions as follows:

**Agreement** Insert at the end of the definition “all as amended herein”

**CDM Co-ordinator** delete.

**CDM Planning Period** delete.

**CDM Regulations** delete “2007” and insert “2015”.

**Construction Phase Plan** delete the existing text and insert: “the plan referred to in regulation 2 of the CDM Regulations, including any updates and revisions.”

Insert a new definition: “**Contract**” means “the Agreement and Conditions of the Joint Contracts Tribunal Limited Intermediate Building Contract 2011 edition all as amended by this Agreement and its Appendices.”

**Conditions** Insert at the end of the definition “all as amended by and including any additional clauses or provisions hereby added by this Agreement and its Appendices.”

**Interest Rate** Delete “5%” and replace with: “3%”. Insert at the end of the definition a new sentence: “The Contractor acknowledges that this is a substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.”

Insert a new definition: “**Legislation**” means “all Acts of Parliament and statutory regulations, instruments or orders, court decisions or judgments having the force of law and codes of practice issued thereunder and all applicable European Community legislation, as any of the same may be amended or interpreted from time to time.”

Insert a new definition: “**Practical Completion**” means “the Works are practically complete notwithstanding that there are snagging items which are minor and would only be such either individually or cumulatively, as would not materially delay or impede the occupation of the [premises comprised in the Works] by the Employer or applicable third parties.”

Insert a new definition: “**Principal Designer**” means “the Architect/Contract Administrator or other person named in Article 5 or any successor appointed by the Employer.”

Insert a new definition: “**Sub Contractor**” means “any subcontractor engaged by the Contractor to carry out and complete the following works packages: -

[TBC]

and any other subcontractor engaged by the Contractor to carry out a substantial part of the Works.”

**SWMP Regulations** delete.

Insert a new definition: “**Third Party**” means “means any third party notified by the Employer to the Contractor as having an interest in the Works”.

## **Notices and other communications**

### **Clause 1.7.3**

In the third line, the words “or sent by email” are inserted after the word “post”.

### **Clause 1.7.4**

In the second line, the words “or sent by email or” are inserted after the words “by hand”.

## **Effect of Final Certificate**

### **Clause 1.9**

Delete clause 1.9.1.1 and mark “Not used”.

## **Effect of certificates other than Final Certificate**

### **Clause 1.10**

Delete “Save as stated in clause 1.9”.

## **Section 2: Carrying out the Works**

### **General obligations**

#### **Clause 2.1**

After “Construction Phase Plan”, delete “(where applicable) and other” and insert “and”.

### **Materials, goods and workmanship**

#### **Clause 2.2**

At the end of clause 2.2.1 insert “and in any event the Works shall be carried out and completed in a good substantial workmanlike manner and in accordance with good building practice current from time to time”.

Insert new clause 2.2.3 as follows:



2.2.3 “The Contractor warrants that it has not specified and will not specify for use and has not authorised or approved and will not authorise or approve the specification or use by others, of any products or materials not in conformity with relevant British or European Standards or Codes of Practice or which at the time of specification (or use) given the general awareness and state of knowledge within the construction industry at the time are known to be deleterious to health and safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used. If in the performance of its duties under this Contract the Contractor becomes aware that it or any other person has specified or used, or authorised or approved the specification or use by others, of any such products or materials the Contractor will notify the Employer in writing immediately.”

## **Possession**

### **Early use by Employer**

#### **Clause 2.6.1**

After “notwithstanding clause 2.4,” in line 1 insert:

“the Employer and the Contractor may agree before the commencement of the Works that the Employer is to possess part or parts of the Works or a section of them and, if they so agree, the Contractor shall give up possession of that part or parts or that section of the Works by the pre-agreed date or any extension to that date or adjustment to it under 2.19. Without prejudice to the foregoing and notwithstanding clause 2.4,”

## **Supply of Documents, Setting Out etc.**

### **Further drawings, detailed and instructions**

#### **Clause 2.11.4**

Insert new clause 2.11.4 as follows:

2.11.4 “The Contractor agrees to provide the Employer upon request such documents and information as the Employer may reasonably require to demonstrate the Contractor’s compliance with the terms of this Contract.”

## **Adjustment of Completion Date**

### **Relevant Events**

#### **Clause 2.20**

Delete clause 2.20.2.2 and replace with “Not Used.”

Insert at the end of clause 2.20.2.3:

“or unless the opening up for such inspection or test was reasonably required by

reason of any similar, equivalent or associated work, materials or goods having been shown by a similar inspection or test not to be in accordance with this Contract”

Delete clause 2.20.4 and mark “Not Used.”

At the end of the clause 2.20.7 insert:

“provided that the Contractor shall have supplied any information required, placed any necessary orders and otherwise performed its obligations under this Contract in respect of such works so as not to delay or disrupt the Statutory Undertaker in relation to such works.”

Insert at the end of clause 2.20.10 “which directly affects the execution of the Works”.

At the end of clause 2.20.11 insert:

“save where the Contractor has a reasonably economic alternative source of supply available to it and/or to the extent that the Contractor’s Persons are not participants in the relevant strike or lock-out.”

#### **Clause 2.20A**

Insert a new clause 2.20A as follows:

2.20A “The Contractor shall not be entitled to any extension of time under clauses 2.19 or 2.20 to the extent that any delay is caused or contributed to by any default, whether by act or omission, of the Contractor or any of the Contractor’s Persons.”

### **Practical completion and certificates**

#### **Clause 2.21**

Delete “3.18.4” and insert “3.18 in respect of the supply of documents and information”.

### **Defects**

#### **Rectification**

#### **Clause 2.30**

Renumber clause 2.30 as clause 2.30.1. In line 4 after “shall” insert:

“within such period of time as is stipulated in the Contract Documents or as is specified by the Employer (such period of time to be commensurate with such defect, shrinkage or fault) and in any event within a reasonable time, and”

Insert new clause 2.30.2:

2.30.2 “Failure by the Contractor to comply with the provisions of this clause 2.30 and/or complete the remedial or other works within the period or periods

agreed shall entitle the Employer to execute those outstanding works and recover all direct costs from the Contractor by making an appropriate deduction in respect of such works from the Contract Sum.”

#### **Clause 2.32**

Insert new heading “**Approvals**”.

Insert new clause 2.32:

- 2.32 “Notwithstanding any other provision of this Contract, the terms “approval” when used in the context of any approval to be given by or on behalf of the Employer shall have the meaning “acceptance of general principles only”, and no such approval or any consent given by the Employer nor any inspection or failure to inspect the Works shall diminish or relieve the Contractor from any of his obligations or liabilities under this Contract.”

### **Section 3: Control of the Works**

#### **Person-in-charge**

#### **Clause 3.2**

Renumber clause 3.2 as clause 3.2.1. In line 1 after “shall ensure” insert:

“that its personnel, sub-contractors and agents engaged in the execution of this Contract are properly supervised and managed and that a sufficient number of workers or workforce are engaged in the execution of this Contract and those of its sub-contractors so engaged to enable the Contractor to perform the Contract and”

Insert new clauses 3.2.2 to 3.2.4:

- 3.2.2 “For the purposes of enabling the Employer to satisfy itself as to the Contractor’s compliance with this clause 3.2, the Contractor shall maintain throughout the performance of the Contract proper and up-to-date records of all personnel engaged by the Contractor (including personnel of its sub-contractors) who are and/or who are likely to have any connection with the performance of the Contract including employee attendance records and shall afford the Employer full access to such records upon reasonable notice in writing by the Employer.”
- 3.2.3 “The Employer shall, on giving notice together with reasons to the Contractor, have the power to require the Contractor, (but not unreasonably or vexatiously), to remove any individual member or members of the Contractor’s personnel, or of its sub-contractors having given written reasons to the Contractor for so requiring.”
- 3.2.4 “The Employer shall under no circumstances be liable either to the Contractor or to its personnel, agents or its sub-contractors for any cost, expense, liability, loss or damage occasioned by removal under clause 3.2.3 above and subject as aforesaid the Contractor shall fully indemnify the

Employer in respect of any claim made by the said personnel, agents and/or sub-contractors.”

## **Replacement of Architect/Contract Administrator or Quantity Surveyor**

### **Clause 3.4.1**

Delete the second sentence in clause 3.4.1.

## **Sub-Contracting**

### **Consent to sub-contracting**

#### **Clause 3.5**

Insert the words “and clause 3.6A” after “shall be subject to clause 3.6” in line 3.

### **Conditions of sub-contracting**

#### **Clause 3.6A**

Insert a new clause 3.6A as follows:

3.6A “Where the Employer has consented to the appointment of a subcontractor for the purposes of clause 3.5, the Contractor may only change the identity of that subcontractor with the Employer’s prior written consent, which may (subject to clauses 3.7.3 and 3.7.6) be withheld at the Employer’s absolute discretion.”

#### **Clause 3.6.2**

Delete the existing text in clause 3.6.2.3 and insert “that each party to the sub-contract shall in relation to the Works and the site comply with applicable CDM Regulations;”

At the end of clause 3.6.2.5 insert “and include a provision that it shall be a condition precedent to payment under the sub-contract that such collateral warranties are so provided”.

Insert new clauses 3.6.2.7 and 3.6.2.8 as follows:

3.6.2.7 “that the sub-contract may be assigned to the Employer at no additional cost to the Employer;

3.6.2.8 for appropriate provisions relating to either professional indemnity insurance or product liability insurance at levels and as approved by the Employer such approval not to be unreasonably withheld or delayed.”

## **Named Sub-Contractors**

### **Clause 3.7**

Delete clause 3.7 and insert a new clause 3.7 as follows:

#### **3.7.1 “Where**

3.7.1.1 it is stated in the Contract Bills/Specification/Work Schedules that work is to be carried out (or materials or goods are to be supplied) by a named person (or by a person who is to be selected from a list of names) who is to be employed by the Contractor as a sub-contractor or supplier; or

3.7.1.2 it is stated in an instruction from the Architect/Contract Administrator under clause 3.13 that work is to be carried out (or materials or goods are to be supplied) by a named person and employed by the Contractor as a sub-contractor or supplier

the Contractor shall (subject to clause 3.7.4) not later than 21 days after entering into this Contract (or, as appropriate, not later than 21 days after the date of the instruction) enter into a sub-contract with the person named or selected from the list (as appropriate). The Contractor shall be (and shall remain) wholly responsible for the performance of all sub-consultants, sub-contractors and suppliers appointed pursuant to this clause 3.7.

3.7.2 Where pursuant to clause 3.7.1.1 the Contractor is to select a person from a list of named persons, the Contractor shall at its discretion select therefrom.

3.7.3 If the Contractor is unable to enter into a sub-contract with a named person (or, as appropriate, with a person who is to be selected from a list) in accordance with clauses 3.7.1 and 3.7.2 the Contractor shall, subject to the prior written consent of the Employer (which shall be at the Employer's absolute discretion where the Contract Bills/Specification/Work Schedules named the person who was to perform the relevant work or supply the relevant goods and which shall not be unreasonably withheld or delayed in all other cases), appoint a replacement person to carry out and complete the relevant work or to supply the relevant goods or materials. The Contractor shall not be entitled to any extension of time or additional payment arising from the Contractor's failure or inability to enter into a sub-contract in accordance with clauses 3.7.1 and 3.7.2 or the appointment of a replacement person pursuant to this clause 3.7.3.

3.7.4 The Contractor shall be excused from complying with an instruction of the sort referred to in clause 3.7.1.2 if within 14 days of the date of issue of the instruction he makes a reasonable objection in writing, stating his grounds for so objecting, provided that no such objection shall be valid where the Contract Bills/Specification/Work Schedules specified that the relevant work would be performed by (or the relevant goods would be supplied by) the person who was named in the instruction.

- 3.7.5 The Contractor shall not terminate the appointment of any sub-contractor (whether the sub-contractor was engaged pursuant to clauses 3.7.1, 3.7.2 or otherwise) unreasonably or capriciously.
- 3.7.6 If the employment of a sub-contractor, whether appointed in accordance with clauses 3.7.1 to 3.7.3 or otherwise, is determined prior to the completion of the works to be carried out by him the Contractor shall appoint at no cost to the Employer a replacement sub-contractor of the Contractor's choosing to carry out and complete the aforesaid unfinished works to the standard and quality required by this Contract.
- 3.7.7 The Contractor shall obtain all warranties and/or guarantees, available from the manufacturers and suppliers of all goods and equipment forming part of the Works whether or not expressly indicated in the Specification and shall ensure that the same are issued in favour of the Employer and handed over to the Employer as a condition precedent to Practical Completion of the Works."

## **Architect/Contract Administrator's Instructions**

### **Compliance with instructions**

#### **Clause 3.8.1**

Delete and mark "Not used".

### **Instructions requiring Variations**

#### **Clause 3.11.2**

Delete clause 3.11.2 and mark "Not used".

#### **Clause 3.11.3**

Insert at the end of clause 3.11.3:

"provided that the Contractor shall not be entitled to claim an extension of time or any addition to the Contract Sum by reason of any sanction given by the Architect/Contract Administrator pursuant to this clause unless the Contractor shall have requested such sanction from the Architect/Contract Administrator in writing within 14 Business Days after the commencement of the relevant works. For the avoidance of doubt, approval or sanctioning of drawings, specification or other details prepared or provided by or on behalf of the Contractor shall not constitute an acceptance by the Architect/Contract Administrator of any alterations or modifications incorporated therein as Variations and only alterations or modifications specifically instructed by the Architect/Contract Administrator as Variations in accordance with this clause 3.11 shall constitute Variations for the purpose of this Contract".

### **Inspections – tests**

#### **Clause 3.14**

At the end of the clause insert:

"or unless the opening up for such inspection or test was reasonably required by reason of any similar, equivalent or associated work, materials or goods having been shown by a previous inspection or test not to be in accordance with this Contract pursuant to clause 3.14 and such work has been covered up by the Contractor before the Employer has had a reasonable opportunity to inspect or test the work, materials or goods in question."

#### **Instructions as to removal of work etc.**

##### **Clause 3.16.1**

At the end of the clause insert "or such other instructions as are required so that such work, materials or goods comply with this Contract."

#### **CDM Regulations**

Amend heading to read "**CDM Regulations and Health and Safety**".

##### **Clause 3.18**

Delete the heading.

The content of clause 3.18 shall be deleted and the following shall be inserted in its place:

"Each Party undertakes to the other that in relation to the Works and site he will duly comply with applicable CDM Regulations. In particular but without limitation:

.1 the Employer shall ensure that the Principal Designer carries out his duties and, where the Contractor is not the Principal Contractor, shall ensure that the Principal Contractor carries out his duties under those regulations;

.2 the Contractor shall comply with regulations 8 and 15 and, where he is the Principal Contractor, with regulations 12 to 14;

.3 whether or not the Contractor is the Principal Contractor, compliance by the Contractor with his duties under the regulations, including any such directions as are referred to in regulation 15(3), shall be at no cost to the Employer and shall not entitle the Contractor to an extension of time;

.4 if the Employer appoints a replacement for the Principal Designer or Principal Contractor, the Employer shall immediately upon that appointment notify the Contractor with details of the new appointee."

##### **Clause 3.19**

Delete the clause heading, number and text.

##### **Clause 3.20**

Insert new sub heading "**Health and Safety Special Conditions**".

Insert new clauses 3.20.1 to 3.20.7 as follows:

- 3.20.1 "The Contractor shall in executing this Contract ensure that its personnel and any sub-contractor and any other person acting on behalf of the Contractor will comply with Legislation in relation to the safety and health of its employees, of sub-contractors, of any other persons in or near the site of this Contract and of the members of the public. The Contractor shall comply with:  
i) all Legislation in the field of health and safety at work; ii) all specific requirements relating to health and safety contained in the Contract Documents; and iii) with any instructions the Employer may give to the Contractor in relation to health and safety.
- 3.20.2 The Contractor shall comply with all relevant codes of guidance related to health and safety including but not limited to guidance issued by the Health and Safety Executive.
- 3.20.3 The Contractor shall inform the Employer as soon as becoming aware of any prosecution or pending or likely prosecution of the Contractor for any offence pertaining to the health and safety of its employees or of other persons, or of any conviction on such prosecution, and shall provide the Employer with such further information and documents as the Employer may require.
- 3.20.4 The Contractor shall:
  - 3.20.4.1 if so requested by the Employer or as required by the Contract Documents, provide the Employer with a copy of the Contractor's health and safety policy, health and safety codes of practice and risk assessments;
  - 3.20.4.2 consult regularly with such health and safety representatives or committees as the Employer may appoint or establish;
  - 3.20.4.3 keep its health and safety policy, health and safety codes of practice and risk assessments under review and make any amendments necessary, particularly where there has been a change to current Legislation or working practices or the introduction of new equipment (including vehicles) and shall notify the Employer in writing of any changes made;
  - 3.20.4.4 comply with any changes, amendments or further instructions reasonably issued by the Employer in connection with the Contractor's health and safety procedures; and
  - 3.20.4.5 comply with all practices, procedures, guidelines and other requirements relating to health and safety as may be specified in any other Contract Documents.
- 3.20.5 The Contractor shall comply with the Employer's Code of Practice for Construction Sites (which is guidance on good environmental practice) as directed by the Employer, the contents of which shall be notified to the



Contractor by the Employer if the Employer determines that it is applicable to the activities of the Contractor under the Contract.

- 3.20.6 The Contractor shall indemnify the Employer against all claims and proceedings and all liabilities, losses, costs, damages and expenses incurred in connection therewith by the Employer as a result of any breach of this clause 3.20 by the Contractor, its employees, sub-contractors or agents.”

### **Clause 3.21**

Insert new heading “**Third Parties**” and insert new clause 3.21 as follows:

- 3.21 “The Contractor shall permit any Third Party (and/or its professional advisers) at all reasonable times and at reasonable intervals to enter onto the site of the Works to view the progress and state of the Works and the materials used or intended for use therein subject to:

- (a) reasonable prior notice being given to the Contractor;
- (b) such Third Party (and/or its professional advisers as applicable) reporting to the site office before making any inspection and acting in accordance with the proper instructions of the Architect/Contract Administrator;
- (c) compliance with the health and safety requirements imposed by the Contractor in respect of the Works; and
- (d) the progress of the Works not being impeded.”

## **Section 4: Payment**

### **Interim payments – due dates and certificates**

#### **Clause 4.7.1.2**

Change “14 days” to “28 days”.

### **Interim payments – amounts due**

#### **Clause 4.8.1.2**

In line 2 after “casualties” insert:

“and upon the Contractor providing the Architect/Contract Administrator with reasonable proof that the property in such materials or goods is vested in him and that no sub-contractor or supplier has validly retained title to the same”

#### **Clause 4.8.2**

Delete from the list:

“Fluctuations – Contribution, levy and tax fluctuations, if applicable (clause 4.15)” and “Fluctuations – Named Sub-Contractors (clause 4.16)”.

**Clause 4.8.3**

Delete the contents of clause 4.8.3 after “3.9 (*Non-compliance with instructions*)”.

**Contractor’s Interim Applications and Payment Notices****Clause 4.10.1**

At the end of the clause insert:

“Interim Applications shall be accompanied by such further information as may be specified in the Employer’s Requirements and/or such further information as the Architect/Contract Administrator may reasonably require.”

**Interim payments – final date and amount****Clause 4.11.1**

Change “14 days” to “28 days”.

**Pay Less Notices and general provisions****Clause 4.12.3**

Delete the contents of clause 4.12.3 and replace with:

“The Employer’s interest in the percentage of the total value not included in the amounts of the interim payments to be certified under clause 4.7.2 shall not be fiduciary and prior to Practical Completion the relationship of the Employer and the Contractor with regard to such sum shall be that of debtor and unsecured creditor and the Employer shall have no obligation to segregate the monies or place in a separate bank account or otherwise separately identify an account for the monies.”

**Fluctuations**

Delete clauses 4.15 and 4.16 and mark “Not used”.

**Loss and Expense****Disturbance of regular progress****Clause 4.17**

In line 3 of the final paragraph after “operation of this clause” insert:

“and save to the extent that such loss and or expense is caused or materially contributed to by any default, whether by act or omission, of the Contractor or the Contractor’s Persons”.

In line 5 after “expense incurred” insert “(which could not have been reasonably mitigated)”.

**Relevant Matters**

**Clause 4.18.2.2**

Delete and mark "Not Used".

**Clause 4.18.2.3**

At the end of the clause after "this Contract" insert:

"or unless the opening up for such inspection or test was reasonably required by reason of any similar, equivalent or associated work, materials or goods having been shown by a previous inspection or test not to be in accordance with this Contract and such work has been covered up by the Contractor before the Architect/Contract Administrator has had a reasonable opportunity to inspect or test the work, materials or goods in question"

**Clause 4.18.2.4**

Insert at the end of this clause "other than the CDP Documents for which the Contractor is wholly responsible".

**Section 5: Variations****Definition of Variations****Clause 5.1**

At the end of clause 5.1.2 insert:

"but excludes a change necessitated or contributed to in any way by any negligence, breach of contract, breach of statutory duty, omission or default of the Contractor, or the Contractor's Persons"

Delete clause 5.1.2.4 and mark "Not used".

At the end of clause 5.1 insert:

"but excludes a change necessitated or contributed to in any way by any negligence, breach of contract, breach of statutory duty, omission or default of the Contractor, or the Contractor's Persons".

**Clause 5.6.3**

Insert new clause 5.6.3:

"In the event that the Employer omits any part or parts of the Works by virtue of an instruction pursuant to clause 3.11 whether relating to a provisional sum item or otherwise the Employer shall not be liable to the Contractor for any loss of profit, anticipated profit, overheads and supervision and/or any other losses and/or expenses arising out of or in connection with the omission of such works save that the Employer shall reimburse the Contractor such reasonable sum for aborted design works and in the case of works already in progress and/or materials or works already ordered which the Contractor is liable to pay for, or the costs of cancellation or break costs where the orders for such goods or materials or works cannot be cancelled without penalty (provided that such costs shall be limited to the extent of such costs that the Contractor

is obligated to make to the relevant suppliers or subcontractors) arising out of or in connection with such omitted works together with any remedial or restitutional works necessitated thereby”.

## **Section 6: Injury, Damage and Insurance**

### **Liability of Contractor – injury or damage to property**

#### **Clause 6.2**

Renumber this clause as 6.2.1.

Insert new heading “**Nuisance**” and new clause 6.2.2:

6.2.2.1 “The Contractor shall at all times use his best endeavours to prevent any public or private nuisance or other interference with the rights of any adjoining or neighbouring land owner, tenant or occupier or any statutory undertaker arising out of the carrying out of the Works and shall defend or at the Employer’s option assist the Employer in defending any action or proceedings which may be instituted in relation thereto howsoever such action may arise.”

6.2.2.2 “The Contractor shall be responsible for and shall indemnify the Employer from and against any and all expenses, liabilities, losses, claims and proceedings whatsoever resulting from any failure or default of this clause by the Contractor”.

## **Section 7: Assignment and Collateral Warranties**

### **Assignment**

#### **Clause 7.1**

Delete clause 7.1 and replace with a new clause 7.1:

7.1 “The Contractor shall not without the written consent of the Employer assign this Contract or any rights thereunder. The Employer may without the consent of the Contractor assign the benefit of this Contract on no more than two occasions and in addition may charge and/or assign this Contract without the consent of the Contractor by way of security”

### **Collateral Warranties**

#### **Contractor’s Warranties – Purchasers and Tenants**

#### **Clause 7.4**

In line 1 delete “In respect of any Purchasers and Tenants identified in Part 2 of the Contract Particulars, the” and insert “The”.

Delete from “CWa/P&T” to the end of the clause and replace with “annexed to this Contract at Appendix 4”.

## **Contractor's Warranty – Funder**

### **Clause 7.5**

In line 1 delete “In respect of a Funder identified in Part 2 of the Contract Particulars, the” and insert “The”.

Delete from “CWa/F” to the end of the clause and replace with “annexed to this Contract at Appendix 4”.

## **Sub-Contractor's Warranties**

### **Clause 7.6**

In lines 1 and 2 delete “Where Part 2 of the Contract Particulars provides for the giving by any sub-contractor of a Collateral Warranty to a Purchaser, Tenant or Funder or to the Employer, the” and insert “The”.

Delete from “identifying the relevant sub-contractor” in line 3 to “Contract Particulars and” in line 6 and replace with:

“deliver to the Employer collateral warranties from each Sub Contractor in favour of the Employer, [any Purchaser and/or Tenant and/or Funder] such collateral warranties to be substantially in the same form as the form annexed at Appendix 4 with such amendments as may be approved by the Employer such approval not to be unreasonably withheld or delayed and”

## **Section 8: Termination**

### **Meaning of insolvency**

#### **Clause 8.1.1.5**

Insert new clause 8.1.1.5 as follows:

8.1.1.5 “or any notice of intention to appoint an administrator is given or if such notice is given by its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to that Act);”

### **Notices under section 8**

#### **Clause 8.2.1**

Delete “not be given unreasonably or vexatiously” and replace with “be given only in accordance with this Agreement and in any event shall not be given vexatiously”.

## **Termination by Employer**

### **Default by Contractor**

#### **Clause 8.4.1.3**

In line 2 after “remove” insert the words “or make good”.

**Clause 8.4.4**

Insert new clause 8.4.4 as follows:

- 8.4.4 “Notwithstanding anything contained in clauses 8.4.1 to 8.4.3 hereof, in the event that the Contractor commits a material breach of this Agreement, the Employer shall be entitled to terminate this Agreement forthwith by notice in writing to the Contractor to that effect.”

**Corruption****Clause 8.6**

Renumber clause 8.6 as 8.6.1.

Insert new clauses 8.6.2 to 8.6.5 as follows:

- 8.6.2 “Neither the Contractor nor the Contractor’s Persons shall commit and the Contractor warrants and represents that in entering this Agreement, neither the Contractor nor any of the Contractor’s Persons has committed any of the following (“Prohibited Acts”):
- 8.6.2.1 offer, give or agree to give to the Employer, or the Employer’s Persons or any other person any gift or consideration of any kind as an inducement or reward:
    - .1 for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Employer; or
    - .2 for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Employer;
  - 8.6.2.2 enter into this Contract or any other contract with the Employer in connection with which commission has been paid or has been agreed to be paid by the Contractor (or anyone acting on its behalf or to its knowledge) unless before such contract is made, particulars of any such commission and the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Employer;
  - 8.6.2.3 commit any offence under the Bribery Act 2010, or Section 117(2) of the Local Government Act 1972 or under Legislation creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Employer; or
  - 8.6.2.4 defraud or attempt to defraud or conspire to defraud the Employer.

8.6.3 If the Contractor (or the Contractor's Persons) commits any of the Prohibited Acts with or without the knowledge of the Contractor, in relation to this Contract then the Employer shall be entitled to:

8.6.3.1 terminate this Contract by notice in writing having immediate effect; and \ or

8.6.3.2 require the Contractor to procure the termination of any subcontract or agency agreement if the Prohibited Act is that of the Contractor's sub-contractor or agent; and\or

8.6.3.3 require the Contractor to dismiss an employee of the Contractor, if the Prohibited Act is committed by the employee acting independently of the Contractor; and\or

8.6.3.4 recover from the Contractor any loss sustained in consequence of any breach of clause 8.6.2 by the Contractor.

8.6.4 The Contractor shall promptly inform the Employer of the occurrence of any Prohibited Act of which it becomes aware.

8.6.5 Any termination notice given pursuant to clause 8.6.3.1 shall specify:

8.6.5.1 the nature of the Prohibited Act;

8.6.5.2 the identity of the party whom the Employer believes has committed the Prohibited Act; and

8.6.5.3 the date on which the Contract will terminate."

Insert new heading "**Gratuities Tips and Charges**" and insert new clause 8.6.6 as follows:

8.6.6 "Neither the Contractor nor the Contractor's Persons shall solicit or accept any gratuity, tip or any form of money taking or reward, collection or charge for the provision of any part of this Contract other than bona fide charges approved by the Employer, such approval not to be unreasonably withheld."

### **Consequences of termination under clauses 8.4 to 8.6**

#### **Clause 8.7.6**

Insert new clause 8.7.6 as follows:

8.7.6 "Upon any determination of the Contractor's employment or if this Contract is determined or discharged and notwithstanding the validity of such determination or discharge is disputed by the Contractor, the Contractor shall vacate the site and shall immediately deliver to the Employer possession of the site and the Works."

### **Termination by Contractor**

## **Default by Employer**

### **Clause 8.9.1**

In clause 8.9.1.3 delete “;or” and replace with “, ”

Delete clause 8.9.1.4 and mark “Not Used”.

### **Clause 8.9.3**

In clause 8.9.3 the references to “14 day(s)” shall be replaced with references to “21 day(s)”.

## **Consequences of Termination under clauses 8.9 to 8.11 etc.**

### **Clause 8.12.2**

In line 1 after “the Contractor shall” insert:

“immediately vacate the Site and leave it in a secure and tidy manner and immediately deliver to the Employer possession of the site and of the Works, and”

### **Clause 8.13**

Insert new clause 8.13 as follows:

“Upon determination of the Contractor’s employment under any of clauses 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 8.10 and/or 8.11, the Contractor shall immediately vacate the site leaving it in a safe and tidy manner, and deliver possession of the site to the Employer.”

## **Section 9: Settlement of Disputes**

### **Arbitration**

Delete clauses 9.3 to 9.8

## **Schedule 2: Named Sub-Contractors**

Delete and mark “Not used”.

## **Schedule 4: Fluctuations Option – Contribution, levy and tax fluctuations**

Delete and mark “Not Used”.



## APPENDIX 1

### PART 2

#### SPECIAL CONDITIONS

##### 1. DEFINITIONS AND INTERPRETATION

In the Special Conditions set out below, the following expressions shall have the following meanings:

**“2000 Act”** means the Freedom of Information Act 2000 and any subordinate legislation made thereunder from time to time together with any guidance and codes of practice issued by the Information Commissioner in relation thereto;

**“Confidential Information”** means Information, data and material of any nature which either Party may receive or obtain in connection with the Contract and:

- (1) which comprises Personal Data or Sensitive Personal Data (as both terms are defined in the Data Protection Act 1998); or
- (2) the disclosure of which would or would be likely to prejudice the commercial interests of either Party or any other person and the public interest in maintaining non disclosure would outweigh the public interest in disclosure; or
- (3) the disclosure of which by the Employer would constitute a breach of confidence actionable by the Contractor or a third Party;

**“Environmental Information Regulations”** means the Environmental Information Regulations 2004;

**“LBI’s Publication Scheme”** means the publication scheme adopted by the Employer pursuant to section 19 of the 2000 Act and as amended by the Employer from time to time;

**“Information”** means Information as defined in section 84 of the 2000 Act;

**“Request for Information”** Shall have the meaning set out in section 8 of the 2000 Act or any apparent request for Information under the 2000 Act or the Environmental Information Regulations.

##### 2. CONFLICT OF INTEREST

- 2.1 In undertaking this Contract, the Contractor shall at all times act in the best interests of the Employer and shall at no time subordinate or otherwise undermine the Employer’s interests to the advantage of its own interests or those of any third party.

- 2.2 The Contractor shall immediately notify the Employer Representative in writing upon becoming aware of any actual or potential conflict of interest between the interests of the Employer and itself or any other Employer or prospective Employer and will take all necessary steps to remove or avoid the cause of such conflict of interest to the satisfaction of the Employer Representative.

**3. Not used**

**4. UNLAWFUL DISCRIMINATION AND EQUAL OPPORTUNITIES**

- 4.1 In the performance of its obligations under the Contract the Contractor shall comply and shall ensure that its personnel, agents and sub-contractors comply with the best professional practice in relation to equal opportunities in particular (but not limited to) all relevant Legislation (including but not limited to the Equalities Act 2010 as well as statutory and other official guidance and codes of practice and any amendments to each of the same.
- 4.2 The Contractor acknowledges that the Employer has a general duty under the Equalities Act (hereinafter referred to below as "the Act") to have due regard to the need to eliminate unlawful discrimination and promote equality of opportunity and good race relations in carrying out their functions.
- 4.3 The Contractor shall be construed to have and to accept that it has the same obligations as the Employer under the Act when performing its obligations and will comply with any instructions issued by the Employer for the purpose of securing the Contractor's compliance with the Act. The Contractor shall comply with the general duty under the Act as set out in Condition 5.1 above and any Codes of Practice issued by the Commission for Racial Equality including (but not limited to) the Code of Practice for the Elimination of Racial Discrimination and the Promotion of Equality of Opportunity in Employment.
- 4.4 The Contractor, its agents and sub-contractors shall adopt the Employer's own equal opportunities policies and procedures (as directed by the Employer and as the same may be adopted and amended from time to time), or operate their own equal opportunities policy subject to prior approval by the Employer, to comply with the statutory requirements of the Acts and accordingly shall not, when employing persons for the purpose of performing the Contractor's obligations in the Contract, discriminate on the grounds of race directly, indirectly, by victimisation or otherwise.
- 4.5 The Contractor shall, at the request of the Employer, provide for the Employer a suitable breakdown of the workforce by race and grade as the Employer may reasonably require in order to be satisfied as to the Contractor's compliance with Conditions 4.1 to 4.4 above. The Contractor shall monitor the representation within the workforce of employees of

different racial groups (meaning groups of persons defined by reference to colour, race, nationality, ethnic or national origins) and further undertakes to report to the Employer the results of such monitoring at the Employer's request. If it appears to the Contractor or the Employer that a particular racial group is under-represented in the workforce as a whole or in a particular area of work in the workforce, the Contractor shall use its best endeavours to take such action as the Employer may recommend to address the said lack of representation and encourage members of particular racial groups to apply for jobs or take up training opportunities, wherever possible.

- 4.6 The Contractor shall be considered to be in breach of this Special Condition 4 in the event of any non-compliance with any Legislation and codes of practice relating to unlawful discrimination and equal opportunities including but not limited to the Legislation specified in Special Condition 4.1 above.
- 4.7 The Contractor shall indemnify the Employer in respect of any liabilities, costs, damages, repairs, losses incurred in any action brought by the Commission of Racial Equality and/or any other third party against the Employer for non-compliance with the aforesaid Legislation and codes of practice in the event that the cause for non-compliance is the Contractor's breach of this Condition 4.
- 4.8 The Contractor shall inform the Employer as soon as it is aware of any legal proceedings (whether civil or criminal) brought against the Contractor under any Legislation or of any judgements, awards, convictions (not spent or exempted under the Rehabilitation of Offenders Act 1974), or settlements arising therefrom, and shall provide the Employer with such further information and documentation as may be required in relation thereto.

## **5. Not Used**

## **6. FREEDOM OF INFORMATION**

- 6.1 The Contractor acknowledges that the Employer is subject to the requirements of the Environmental Information Regulations and the 2000 Act and agrees to use all reasonable endeavours to assist the Employer (at the Contractor's expense) to comply with its obligations imposed under those provisions.
- 6.2 The Contractor shall process Information provided to the Contractor by the Employer, produced in the performance of the Contract or relating to the Contract in accordance with a records management system which complies with the Lord Chancellor's code of practice for the keeping and management of records under section 46 of the 2000 Act.
- 6.3 Subject to Condition 8.6, the Contractor shall and shall procure that its sub-contractors shall:

- 6.3.1 transfer any Request for Information received by the Contractor or its sub-contractors to the Employer promptly and, in any event, within two Working Days of its receipt;
- 6.3.2 provide the Employer with a copy of all Information in its possession or power in the form and within the time scale that the Employer requires;
- 6.3.3 provide all necessary assistance as reasonably requested by the Employer to enable the Employer to respond to a Request Information within the time for compliance prescribed by section 10 of the 2000 Act; and
- 6.3.4 not respond directly to a Request for Information or disclose or release Information without the prior written authority of the Employer.
- 6.4 Subject to Condition 6.6, the Employer shall be responsible for determining, in its absolute discretion, whether:
  - 6.4.1 Information relating to a Request for Information is exempt from disclosure under the 2000 Act or the Environmental Information Regulations;
  - 6.4.2 any Information is to be disclosed in response to a Request for Information.
- 6.5 The Contractor acknowledges that the Employer may be obliged under the 2000 Act or the Environmental Information Regulations to disclose Information:
  - 6.5.1 without consulting the Contractor; or
  - 6.5.2 following consultation with the Contractor and having taken its views into account.
- 6.6 Where the 2000 Act applies to the Contractor (by virtue of an order made under section 5 of the 2000 Act or otherwise), the Contractor shall:
  - 6.6.1 comply with the 2000 Act and any associated Legislation and codes of practice (including (without limitation) the Secretary of State's and Lord Chancellor's codes of practice issued under sections 45 and 46 of the 2000 Act); and
  - 6.6.2 where the Contractor receives a Request for Information from a third Party under the 2000 Act, which relates to the Employer, and / or this Contract:
    - 6.6.2.1 inform the Employer about the Request For Information and the nature of the Information being sought as soon as reasonably possible;
    - 6.6.2.2 consider and apply all lawful exemptions provided under the 2000 Act to withhold Information sought in terms of the Request For Information;

6.6.2.3consult with the Employer prior to the disclosure of any such Information;  
and

6.6.2.4keep the Employer informed about the Contractor's progress in dealing with any Request For Information and where requested by the Employer, provide the Employer with copies of any correspondence and documents relating to the Request For Information.

6.7 The Contractor shall indemnify the Employer against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith by the Employer as a result of any breach of this Special Condition 6 by the Contractor, the Contractor's Personnel, sub-contractors or agents.

6.8 The Contractor acknowledges that Confidential Information is indicative only and that the Employer may be obliged to disclose Confidential Information pursuant to the Environmental Information Regulations or the 2000 Act.

## **7. DATA PROTECTION**

7.1 The Contractor shall comply with its obligations, whether as data controller, data processor or otherwise under the Data Protection Act 1998 in so far as applicable to the performance of its obligations under this Agreement.

7.2 The Contractor shall not knowingly place the Employer in breach of its obligations under the Data Protection Act 1998.

7.3 The Contractor shall indemnify the Employer against any and all damages, losses, liabilities, claims, expenses and actions arising as a result of any breach of the Contractor's obligations under clause 7.1 or 7.2

## **8. CONFIDENTIALITY AND PUBLICITY**

8.1 Subject to Conditions 8.3, 8.6 and 8.8 each Party undertakes to the other Party:

8.1.1 to treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly;

8.1.2 not to disclose any Confidential Information belonging to the other Party without the prior written consent of that Party, except to such persons and to such extent as may be strictly necessary for the performance of the Contract or except where such disclosure is otherwise expressly permitted by the provisions of this Contract; and

8.1.3 not use any Confidential Information received from the other Party otherwise than for the purposes of or in connection with Contract.

- 8.2 The Parties shall use of all reasonable endeavours to procure that their employees, agents and sub-contractors keep confidential and do not make any disclosure of Confidential Information to any third Party in breach of Condition 8.1 above and only use such Confidential Information in connection with the performance of the Contract.
- 8.3 Condition 8.1 shall not apply to any disclosure of Confidential Information:
- 8.3.1 which a Party can demonstrate has or becomes generally available to the public and in the public domain otherwise than through the act or default of (or on behalf of) the relevant Party;
  - 8.3.2 which was in the possession of the receiving Party without restriction as to its disposal, before receiving it from the disclosing Party;
  - 8.3.3 which is received from a third Party who lawfully acquired it and who is under no obligation restricting its disclosure;
  - 8.3.4 which is required by law, any judicial or administrative process, the rules of any stock exchange or governmental or regulatory authority having the force of law;
  - 8.3.5 to enable a determination to be made under the Dispute Resolution Procedure in contained in the Conditions of Contract;
  - 8.3.6 by either Party to any department, office or agency of the Government which is for the purpose of:
    - (1) the examination and certification of the Employer's or the Contractor's accounts; or
    - (2) any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Employer has utilised its resources; or
    - (3) which is independently developed without access to the Confidential Information;
    - (4) by the Employer to any third party insofar as this may be necessary to the performance or provision by that party of any services or Services whatsoever for or to the Employer; or
    - (5) by the Employer relating to the Employer's residential or non residential properties and further disclosure by the Employer insofar as this is reasonably necessary for the proper discharge of the Employer's functions; or
    - (6) by the Employer in service monitoring reports to the Employer's Executive or other member body or to the Employer's board, sub-boards or committees.

- 8.4 The Contractor shall not make use of this Contract or other information issued or provided by the Employer in connection with this Contract otherwise than for the purpose of this Contract, except with the prior written consent of the Employer.
- 8.5 When the Contractor, in carrying out its obligations under this Agreement, is provided with Confidential Information or other information relating to users or potential customers of this Contract the Contractor shall not disclose or make use of any such Confidential Information or other information otherwise than for the purpose for which it was provided, unless the Contractor has sought and obtained the prior written consent of that person or the Employer.
- 8.6 At the request of the Employer, the Contractor shall facilitate the Employer's compliance with the Code of Practice on Access to Government Information (second edition) or the Environmental Information Regulations and in the event that the Employer is required to provide information to a person as a result of a request made to it under such Code or regulations, the Contractor shall provide such information relating to the contract, this Contract or itself to enable the Employer to adhere to the requirements of the Code or regulations.
- 8.7 Nothing in this Special Condition 8 shall prevent either Party from using any ideas, know-how or techniques gained during the performance of this Contract in the course of its normal business, to the extent that this does not result in the disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- 8.8 The Contractor acknowledges to the Employer that nothing in this Special Condition 8 shall fetter or affect the Employer's obligations under the Data Protection Act 1998, the 2000 Act or the Environmental Information Regulations.
- 8.9 Subject to Condition 8.11, the Contractor shall not and shall procure that any member of the Contractor's Personnel or sub-contractor shall not make any public statement or issue any press releases or any other form of publicity document relating to, connected with or arising out of this Contract or the matters contained in this Contract without obtaining the Employer's prior written approval as to its contents and manner and timing of its presentation and publication.
- 8.10 The Contractor shall not and shall procure that any member of the Contractor's Personnel, shall not communicate with, or provide information to any representatives of the press, television, radio or other media on any matter concerning or arising out of this Contract without the prior written approval of the Employer.
- 8.11 Either Party may make a public statement or announcement concerning the completion of this Contract if required by:

8.11.1 law; or

8.11.2 any regulatory or Government body to which either Party is subject or submits, wherever situated, whether or not the requirement has the force of law PROVIDED THAT any such statement does not contravene the duty of confidentiality contained in Condition 8.1.

8.12 Subject to the provisions of Condition 8.1 the Employer reserves the right to publish or disseminate information about this Contract and the provision of this Contract as it may deem appropriate from time to time.

## **9. ENFORCEMENT**

9.1 If the Contractor fails to comply with any Special Conditions set out herein the Employer shall be entitled to issue a written instruction stating the action which the Contractor will be required to take to comply with the relevant Conditions. If within seven days (or such other reasonable time given the nature of the breach) after receipt of a written notice from the Employer requiring compliance with such written instruction the Contractor does not comply therewith then the Employer may determine this contract forthwith.

9.2 Notwithstanding anything to the contrary contained herein the Contractor shall indemnify the Employer against all claims and proceedings and liabilities, losses, costs and expenses incurred in connection therewith by the Employer as a result of any breach of the Special Conditions.

## **10. LONDON LIVING WAGE**

10.1 Without prejudice to any other provision of this contract, the Contractor shall:

10.1.1 ensure that none of its employees engaged in the Works [apart from work placements appointed pursuant to condition x]<sup>1</sup> is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage (unless otherwise directed by the Employer).

10.1.2 provide to the Council such information concerning the payment of the London Living Wage to its employees or to the employees of its sub-contractors engaged in the Works as the Employer may reasonably require from time to time; and

10.1.3 co-operate and provide all reasonable assistance to the Employer in monitoring the effect of the London Living Wage on the quality of service provided under this Contract.

---

<sup>1</sup> If the contract makes specific provision for the appointment of work placements or apprentices ensure that they are not covered by the LLW clause.



- 10.4 In this condition 10 the London Living Wage shall mean the basic hourly wage of **£9.75**<sup>2</sup>(before tax, other deductions and any increase for overtime) as may be updated from time by the Greater London Authority.

## **11. Blacklisting**

- 11.1 The Contractor must not commit any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Act 1998 by unlawfully processing personal data in connection with any blacklisting activities. Breach of this clause is a material default which shall entitle the Employer to terminate the Contract with immediate effect.

## **12. DUE AUTHORISATION AND EXECUTION**

- 12.1 The Contractor represents and warrants to the Council that the Contractor has power and authority to enter into, deliver and perform its obligations under this Contract and the transactions/activities contemplated by this Contract, and that it has taken all necessary action to authorise the entry into, delivery, execution and performance of this Contract. The Council shall be entitled to rely on the Contractor's signature to this Contract as conclusive evidence of such due authorisation and execution without further enquiry.

---

<sup>2</sup> This rate changes from time to time. Ensure you are using the most up to date rate



## **APPENDIX 2**

**THE CONTRACT DRAWINGS**

**[THE BILLS OF QUANTITIES]**

**[THE SPECIFICATION]**

**[THE WORK SCHEDULES]**

**[THE ACTIVITY SCHEDULE]**

## **APPENDIX 3**

### **THE CONTRACTOR'S PROPOSALS**

## **APPENDIX 4**

### **FORM OF COLLATERAL WARRANTY TO BE GIVEN BY A SUB-CONTRACTOR IN FAVOUR OF THE EMPLOYER**

## Sub Contractor warranty

dated .....

### Parties

- (1) [ ] whose registered office is at [ ]  
(registration number [ ]) (the **Sub Contractor**)
- (2) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF ISLINGTON** of  
the Town Hall, Upper Street, London N1 2UD (the **Beneficiary**)

### Introduction

- (A) The Sub Contractor carries on business as a [ ] sub contractor and has been appointed as such by the Contractor to carry out the Sub Contract Works upon the terms and conditions contained in the Sub Contract (as hereinafter defined).
- (B) The Beneficiary has an interest/will have an interest in the Property or a part or parts of the Property and/or the Project.
- (C) The Sub Contractor has agreed to enter into this warranty in favour of the Beneficiary.

### Agreed terms

#### 1 Interpretation and definitions

In this warranty the following terms have the following meanings unless inconsistent with the context:

**Building Contract** means the [ ] entered into between the Beneficiary and the Contractor (and any further agreement(s) varying or supplementing it) for the Project;

**Contractor** means [ ];

**Documents** means all drawings plans models specifications schedules reports calculations and other works (including without limitation any such items retained on or in any computer software or other electronic medium) which have been or will be prepared by or on behalf of the Sub Contractor in the course of the carrying out of the Sub Contract Works whether in existence or to be made or produced and including all amendments and additions to them;

**Group Company** means any subsidiary company or holding company of the Beneficiary or another subsidiary or holding company of such company as subsidiary and holding company are defined in section 1159 Companies Act 2006;

**Moral Rights** means moral rights under Chapter IV of Part 1 of the Copyright Designs and Patents Act 1988;

**Practical Completion** means the date of practical completion of the whole of the works being carried out pursuant to the Building Contract;

**Project** means the design and construction of [ ] at the Property, together with such further works and services as may be required by the Building Contract;

**Property** means [ ], as more particularly described in the Building Contract;

**Sub Contract** means the sub contract entered into between the Contractor and the Sub Contractor on or about [ ] (and any further agreement(s) varying or supplementing it) for the Sub Contract Works;

**Sub Contract Works** means the work to be carried out and the services to be performed by the Sub Contractor under the Sub Contract in relation to the Project;

**Working Day** means any day except Saturday Sunday and bank or other public holidays in England;

The clause headings in this warranty are for convenience only and do not affect its interpretation.

Words importing the singular meaning include where the context so allows the plural meaning and vice versa.

Words of one gender include both genders and words denoting natural persons include firms and companies and all are to be construed interchangeably in that manner.

A reference to any statute or statutory instrument shall include a reference to any modification extension or re-enactment of it.

References in this warranty to numbered clauses are to a reference to the relevant clause in this warranty.

### **Consideration**

In consideration of the payment of £10.00 (ten pounds) by the Beneficiary to the Sub Contractor (receipt of which the Sub Contractor hereby acknowledges) the Sub Contractor covenants with the Beneficiary as set out in this warranty.

### **Duty of care**

The Sub Contractor warrants and undertakes to the Beneficiary that:

it has performed and shall continue to perform all of its duties and obligations under or arising out of the Sub Contract; and

to the extent that it has carried out any design of the Sub Contract Works or any part of the Sub Contract Works, the design has been and shall be carried out using all the reasonable skill and care to be expected of a properly qualified and competent sub contractor and designer experienced in the carrying out of such work for projects of a similar size scope value character and complexity to the Sub Contract Works; and

it shall owe a duty of care to the Beneficiary in respect of all matters which lie within the scope of the Sub Contractor's responsibilities in relation to the Project **provided that** the Sub Consultant shall owe no greater duty of care to the Beneficiary under this warranty than it would have done if, in lieu of this warranty, the Beneficiary had been named jointly with the Contractor as client in the Sub Contract; and; and

the Beneficiary shall be deemed to have relied and shall continue to rely upon the Sub Contractor's skill and judgement in respect of all matters which lie within the scope of the Sub Contractor's responsibilities in relation to the Project.

### **Prohibited materials**

The Subcontractor warrants that it has not used and shall not use and that it shall not authorise, cause or allow to be used in the Subcontract Works any products or materials which:

do not conform with British or European Standards (where appropriate) or Codes of Practice (or where no such standard exists do not conform with a British Board of Agrément Certificate); and/or

are generally known to the construction industry to be deleterious, in the particular circumstances in which they are specified for use, to health and safety and/or the durability of buildings or structures; and/or

do not comply with the guidance set out in the publication by Ove Arup and Partners entitled "Good Practice in the Selection of Construction Materials"; and/or

are specifically prohibited under the Sub Contract.

The Sub Contractor shall as soon as reasonably practicable notify the Beneficiary if it becomes aware of any proposed or actual specification and/or use in the Project of any materials which do not comply with clause 0.

### **Copyright and moral rights**

The Sub Contractor hereby grants to the Beneficiary an irrevocable royalty-free non-exclusive licence to use copy and reproduce the Documents for any purpose whatsoever connected with the Project and/or the Property including but without limitation the execution, completion, extension, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of the Project and/or the Property **provided always** that the Sub Contractor shall not be liable for any such use by the Beneficiary of the Documents for any purpose other than that for which the same were prepared and provided by the Sub Contractor.

The licence referred to in clause 0 carries the right to grant sub-licences, shall be transferable to third parties and shall continue in force notwithstanding any termination of the Sub Contract or the Sub Contractor's employment under the Sub Contract.

The Sub Contractor warrants that the use of the Documents for the purposes of the Project and/or pursuant to the licence granted pursuant to clause 0 shall not infringe the rights of any third party.



The Sub Contractor waives absolutely all Moral Rights the Sub Contractor may have in the Documents and/or the Sub Contract Works and where it is not the author shall procure a waiver from the author of any Moral Rights the author may have in respect of the Documents and/or the Sub Contract Works.

When requested to do so by the Beneficiary the Sub Contractor shall provide to the Beneficiary copies of the Documents subject to the Beneficiary paying the Sub Contractor's reasonable copying charges in connection with complying with such request.

### **Assignment**

The Sub Contractor shall not without the consent of the Beneficiary assign its rights under this warranty.

The Beneficiary may (without the consent of the Sub Contractor) assign its rights under this warranty:

to any mortgagee and by way of re-assignment on redemption;

to any Group Company;

on two other occasions only.

In this warranty references to the Beneficiary shall include where the context admits its permitted assignees but not so as to permit more than two assignments under clause 0.

The Sub Contractor undertakes with the Beneficiary not to contend that any person to whom this warranty may be assigned will be precluded from recovering under this warranty any loss resulting from any breach of this warranty either by reason that the person is an assignee and not the original party to this warranty or by reason that the Beneficiary named in this warranty or any intermediate owner of the Beneficiary's interest in the Project shall escape loss resulting from such breach by reason of the disposal of its interest in the Project.

### **Notices**

Any notice to be given under this warranty shall be in writing and shall be deemed to be duly given if it is delivered to the parties' registered office for the time being.

Notices may be served by:

personal delivery; or

pre-paid registered or recorded delivery mail; or

facsimile transmission (transmitted before 4.00 pm on a Working Day) and confirmed by first class pre paid post.

Notices and communications shall be deemed to have been served or received in the case of:

personal delivery on the date of delivery;

pre-paid registered or recorded delivery mail on the second Working Day after the notice of communication is posted;

facsimile transmission sent in accordance with clause 0 on the date and time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

### **Continuing effect**

Notwithstanding the completion of the Project or any part of the Project this warranty shall continue to have effect.

### **Miscellaneous**

Nothing in this warranty shall limit or affect any other rights or remedies (whether under any contract, at law, at equity or otherwise) which the Beneficiary would have against the Sub Contractor in the absence of this warranty.

The Sub Contractor's liability under this warranty shall not be released, diminished or in any other way affected by:

the appointment by the Beneficiary of any person to survey the Property or to monitor the carrying out of the Sub Contract Works or to inspect any documents relating to the Property and/or the Sub Contract Works on behalf of the Beneficiary or the failure to appoint such a person; or

any approval or consent given or withheld or purported to be given or withheld by or on behalf of the Beneficiary.

### **Contracts (Rights of Third Parties) Act 1999**

Nothing in this warranty confers or purports to confer any rights on any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

### **Law**

This warranty and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the jurisdiction of the English courts.

This warranty has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it

The common seal of  
**The Mayor and Burgesses of  
The London Borough of Islington**  
was affixed hereto by order

.....  
Authorised Officer (signed)

Executed as a deed for and on behalf of the  
**Sub Contractor**  
acting by a director (or in the case of an LLP, a member) in the presence of a witness

(1) .....	.....
Director/Member (signed)	Director/Member (print name)

(2) .....	.....
Witness (signed)	Witness (print name)

.....  
Witness (print occupation)

.....  
Witness (print address)

**FORM OF PERFORMANCE BOND**

**FORM OF PARENT COMPANY GUARANTEE**

THIS BOND is made as a Deed on the

day of

20XX

BETWEEN

(1) [ ] whose registered office is situated at [ ]  
(hereinafter called "the Contractor") and  
(2) [ ] whose registered office is situated at [ ]  
(hereinafter called "the Surety")

IN FAVOUR OF

The Mayor and Burgesses of the London Borough of Islington of the Town Hall, Upper Street, London N1 2UD (hereinafter called "the Council")  
(hereinafter collectively called "the Parties")

WHEREAS

(1) By a contract dated the day of 20XX made between the Council and the Contractor (hereinafter called "the Contract") the Contractor has contracted with the Council to undertake works and associated services and/or supplies for [ ] (described herein as "the Works") in accordance with the terms of the said Contract.

(2) The Surety has agreed with the Contractor to guarantee in favour of the Council performance of the obligations of the Contractor under the Contract upon the terms and conditions of this Performance Bond subject to the limitation set out in Clause 5 below.

NOW IT IS HEREBY AGREED BETWEEN THE PARTIES as follows:

1. The Surety guarantees to the Council that in the event of any breach of the Contract by the Contractor or on the termination of the Contract or the Contractor's employment thereunder by reason of any act, omission, breach or default of the Contractor, the insolvency of the Contractor or any fraud or corruption by the Contractor (hereinafter called an "Event of Default") the Surety shall, subject to the provisions of this Performance Bond, satisfy and discharge all damages, claims, costs, losses, expenses, liabilities, losses of profit and losses of use (including consequential losses) ("the Damages") sustained by the Council as established and ascertained in accordance with Clause 5 below.
2. The maximum aggregate liability of the Surety and the Contractor under this Performance Bond shall not exceed ten percent (10%) of the total aggregate Contract Price (whichever is the greater) and the Parties hereto agree the liability of the Surety and the Contractor hereunder shall be joint and several and the liability of the Surety shall be co-extensive with the liability of the Contractor under the Contract.
3. The Contractor and the Surety shall not be released and/or discharged from the obligations contained in this Performance Bond in the event of either or any of the following:
  - (a) any change in the nature or extent of the Works being or being due to be performed under the Contract;
  - (b) any alteration to the terms, conditions and/or other provisions of the Contract;
  - (c) any allowance of time, forbearance, indulgence, relaxation or other concession granted by the Council to the Contractor under the Contract in respect of its obligations thereunder;
  - (d) any compromise or settlement of any dispute between the Council and the Contractor (but so that the Council shall not pursue against the Surety a remedy contrary to the terms of any such compromise or settlement in so far as the Contractor shall have complied with such terms);
  - (e) any act or default of the Council or its officers or by any breach or alleged breach of the Contract by the Council; or

- (f) any determination, termination or other cessation of the Contract for any reason whatsoever.
4. The Surety's obligations and liabilities under this Performance Bond shall continue notwithstanding any disclaimer of the Contract by a liquidator, receiver or administrator appointed to the Contractor and the Contract shall for the purposes of this Performance Bond be deemed to continue notwithstanding any such disclaimer.
5. The Damages sustained by the Council by reason of an Event of Default (which shall where applicable include the fees of the expert appointed in accordance with Clause 5(c) below) shall be ascertained and established (at the discretion of the Council) by either:
- (a) written confirmation signed on behalf of the Council and countersigned by the Contractor as to the amount of the Damages payable to the Council by reason of an Event of Default; or
  - (b) a copy of a judgement of a court having jurisdiction or a copy of any award issued in arbitration or like proceedings carried out in conformity with the terms of the Contract; or
  - (c) the written determination of a professional expert qualified and experienced in the relevant area who shall be agreed between the Council and the Surety or in default of agreement shall be appointed by the President for the time being of the Law Society and who shall act as expert and not as arbitrator.
6. If an Event of Default shall occur, notwithstanding that the Damages sustained by the Council shall not have been ascertained and established in accordance with the provisions of Clause 5 of this Performance Bond, the Council may and shall at any time before the Expiry Date (as defined in Clause 7) give notice in writing to the Contractor and the Surety specifying the nature of the Event of Default and making a claim under the terms of this Performance Bond.
7. This Performance Bond shall remain in full force and effect until not less than twenty four months after the date of practical completion of the works ("the Expiry Date") on which date the obligations of the Surety under this Performance Bond shall be released and discharged absolutely save in respect of any Event of Default which has occurred and in respect of which a claim in writing containing particulars of such Event of Default has been made upon the Surety before such date.
8. The Performance Bond shall be governed by and construed in accordance with English Law and the English Courts shall have jurisdiction over any dispute or difference which may arise between the parties hereto out of or in connection with this Performance Bond.
9. The Parties hereto intend this Performance Bond to take effect as a Deed.

IN WITNESS whereof the Parties hereto have executed this Performance Bond as a Deed by causing their respective Common Seals to be hereunto affixed the day and year first before written.

THE COMMON SEAL OF THE CONTRACTOR  
was hereunto affixed in the presence of

.....  
DIRECTOR

.....  
DIRECTOR/SECRETARY

THE COMMON SEAL OF THE SURETY  
was hereunto affixed in the presence of

.....  
DIRECTOR

.....  
DIRECTOR/SECRETARY

.....  
DIRECTOR/SECRETARY

## FORM OF PARENT COMPANY GUARANTEE

Dated ..... 201[    ]

### Parties

- (1) [                      ] a company having its registered address at [                      ] (company number [                      ]) (the **Guarantor**)
- (2) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF ISLINGTON** of the Town Hall, Upper Street, London N1 2UD (the **Beneficiary**)

### Introduction

- (A) The Beneficiary has entered into the Building Contract (as defined below) with the Contractor (as defined below) for the carrying out of the Project for the sum mentioned in the Building Contract.
- (B) The Guarantor has agreed to guarantee the due performance of the Building Contract in the manner set out in this guarantee.

### Agreed terms

#### 2 Interpretation and definitions

In this guarantee the following terms have the following meanings unless inconsistent with the context:

**Beneficiary** means the Beneficiary as defined above and any successors and assigns;

**Contractor** means [                      ] a company having its registered office at [                      ] (company number [                      ]);

**Building Contract** means the JCT Design and Build Contract 2011 edition (as amended) dated [                      ] entered into between the Beneficiary and the Contractor relating to the Project as amended or varied;

**Project** means the design, construction, completion and defects rectification to be carried out at the Site pursuant to the Building Contract including any variations to the Building Contract;

**Site** means [                      ] as further described in the Building Contract.

#### 3 Consideration

In consideration of the payment of £10.00 (ten pounds) by the Beneficiary to the Guarantor (receipt of which the Guarantor hereby acknowledges) the Guarantor covenants with the Beneficiary as set out in this guarantee.



## 4 **Guarantee**

4.1 The Guarantor (as primary obligor and not merely as surety) irrevocably and unconditionally guarantees:

4.1.1 the due and proper performance of the Building Contract by the Contractor;

4.1.2 the due observance and punctual performance of all the obligations, duties, undertakings, covenants and conditions by or on the part of the Contractor contained in the Building Contract and to be observed and performed by the Contractor.

4.2 The guarantee set out in clause 30.1 shall extend to include any variation or addition to the Building Contract.

## 5 **Guarantor's obligations**

In the event of the Contractor failing to carry out, observe or perform all or any of the said obligations, duties, undertakings, covenants and conditions under the Building Contract (unless relieved from the performance of any part of the Building Contract by statute or by the decision of a court or tribunal of competent jurisdiction) or if the appointment of the Contractor under the Building Contract is terminated by operation of clause 8.5 of the Building Contract then notwithstanding any objection that may be raised by the Contractor or the Guarantor the Guarantor will:

5.1 [instruct a subsidiary of the Guarantor to carry out, observe and perform the obligations, duties, undertakings, covenants and conditions under the Building Contract (unless relieved from the performance of any part of the Building Contract by statute or by the decision of a court or tribunal of competent jurisdiction) in substitution for the Contractor; and/or]

5.2 on receipt of written demand be liable for and shall indemnify the Beneficiary against all losses, damages, costs and expenses whatsoever which the Beneficiary may incur by reason or in consequence of any such failure to carry out observe or perform on the part of the Contractor [or any subsidiary appointed pursuant to clause 31.1 under the Building Contract or in consequence of such termination.

## 6 **Waiver of defences**

The Guarantor shall not be discharged or released from this guarantee by the occurrence of any one or more of the following:

6.1 any alteration to the nature or extent of the Project or any amendment to or variation, express or implied, waiver or release of the terms of the Building Contract;

6.2 any allowance of time, forbearance, indulgence or other concession granted to the Contractor under the Building Contract or any other compromise or settlement of any dispute between the Beneficiary and the Contractor **provided that** the Beneficiary shall not pursue against the Guarantor a remedy contrary to the terms of any such compromise or settlement insofar as the Contractor shall have complied with the terms of such compromise or settlement;

- 6.3 the liquidation, bankruptcy, administration, absence of legal personality, dissolution, incapacity, amalgamation, reconstruction or any change in the name, composition, status, function, ownership or control of the Contractor or the Guarantor;
- 6.4 any disclaimer of the Building Contract by any liquidator or administrator appointed to the Contractor (and the Building Contract shall for the purposes of this guarantee be deemed to continue notwithstanding any such disclaimer);
- 6.5 any provision of the Building Contract being or becoming illegal, invalid, void, voidable or unenforceable for any reason whatsoever;
- 6.6 the suspension or termination of the Building Contract or of the employment of the Contractor under the Building Contract for any reason whatsoever;
- 6.7 any failure to take or to realise (or fully to take or to realise), or any release, discharge, exchange or substitution of, any security, guarantee or indemnity in respect of the Building Contract; and
- 6.8 any other act, omission, matter or thing which but for this provision might operate to discharge, release, impair or otherwise exonerate the Guarantor from this guarantee.

## **7 Continuing guarantee**

This guarantee is a continuing guarantee and shall remain in operation until all the obligations, duties, undertakings, covenants, conditions and warranties now or hereafter to be carried out or performed by the Contractor under the Building Contract shall have been satisfied or performed in full.

## **8 Calls on the guarantee**

The Beneficiary:

- 8.1 will not be bound first to make demand on or enforce any rights against the Contractor or any other guarantor or other person before enforcing this guarantee;
- 8.2 may make more than one (1) demand under this guarantee.

## **9 Deferral of guarantor's rights**

- 9.1 Insofar as any sums are payable (contingently or otherwise) by the Contractor to the Beneficiary under the Building Contract the Guarantor shall not exercise any right of set-off or counterclaim against the Contractor or any other person or prove in competition with the Beneficiary in respect of any payment by the Guarantor under this guarantee. If the Guarantor receives any sums from the Contractor or any other person in respect of any payment of the Guarantor under this guarantee the Guarantor shall hold such monies in trust for the Beneficiary so long as any sums are payable (contingently or otherwise) under this guarantee.
- 9.2 The Guarantor will not, without the prior written consent of the Beneficiary, hold any security from the Contractor or any other person in respect of the Guarantor's liability under this guarantee or in respect of any liability or other obligations of the Contractor

to the Guarantor. The Guarantor will hold any security held by it in breach of this provision in trust for the Beneficiary.

**10 Additional security**

This guarantee is in addition to and not in substitution for any present and future guarantee lien or other security held by the Beneficiary. The Beneficiary's rights under this guarantee are in addition to and not exclusive of those provided by law.

**11 Invalidity of any of the terms of this guarantee**

If any provision of this guarantee is held by any competent authority to be invalid unlawful or unenforceable in whole or in part, the validity lawfulness and enforceability of the other provisions of this guarantee and the remainder of the provision in question shall not be affected thereby.

**12 Assignment**

The Beneficiary shall be entitled to assign this guarantee and/ or the benefit of it to a party to whom it has simultaneously assigned the benefit of the Building Contract in accordance with the terms of the Building Contract.

**13 Contracts (Rights of Third Parties) Act 1999**

The parties hereby confirm that nothing in this guarantee shall confer on any person any right to enforce any term of this guarantee which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

**14 Law and jurisdiction**

This guarantee shall be governed by and construed in accordance with the laws of England and Wales and only the courts of England and Wales shall have jurisdiction hereunder. Nothing in this clause shall affect the ability of the Beneficiary to enforce any judgement against the Guarantor in any jurisdiction.

**15 Notices**

15.1 Any notice to be given under this guarantee shall be in writing and shall be deemed to be duly given if delivered in the case of a corporation to the parties' registered office for the time being or in any other case to the parties' principal place of business.

15.2 Notices may be served by:

15.2.1 personal delivery; or

15.2.2 pre-paid registered or recorded delivery mail; or

15.2.3 facsimile transmission (transmitted before 4.00 pm on a working day) and confirmed by first class pre paid post.

15.3 Notices and communications shall be deemed to have been served or received in the case of:

- 15.3.1 personal delivery on the date of delivery;
- 15.3.2 pre-paid registered or recorded delivery mail on the second working day after the notice of communication is posted;
- 15.3.3 facsimile transmission sent in accordance with clause 41.2.3 on the date and time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

This guarantee has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it

The common seal of )  
**THE MAYOR AND BURGESSES OF** )  
**THE LONDON BOROUGH OF ISLINGTON** )  
was affixed hereto by order: )

.....  
Authorised Officer

Executed as a deed for and on behalf of  
**THE GUARANTOR**  
acting by a director in the presence of a witness:

.....  
Director (signed)

.....  
Director (print name)

.....  
Witness (signed)

.....  
Witness (print name)

.....  
Witness (print occupation)

.....  
Witness (print address)